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June 26, 2006

Media Bureau
Video Division
Federal Communications Commission

Re: Free State Communications, L.L.C., licensee of KTKA-TV, permittee of KTKA-DT / Request for waiver of July 1, 2006 replication interference protection deadline / MB Docket No. 03-15

Dear Sir/Madam:

We write on behalf of Free State Communications, L.L.C. ("Free State") to request a waiver of the July 1, 2006 DTV replication interference protection deadline until December 15, 2006, due to circumstances beyond Free State's control.¹

We provide below the following information in support of this Request:

- Background information on KTKA-DT;
- Free State's acquisition of KTKA and its build out of the station's digital facilities;
- The reason for this Request; and
- The factors supporting the grant of the requested waiver.

About the station

KTKA is an ABC affiliate serving the Topeka, Kansas DMA. A majority of the station's service area is made up of rural, agricultural communities. The station is managed by James Evers, a broadcast veteran with over 30 years experience in broadcast station management. Mr. Evers took over the management of KTKA in September 2005, after the station was acquired by Free State.

KTKA-DT currently broadcasts on channel 48 at a reduced power of 14.2 kW ERP under a grant of special temporary authority ("STA") which expires July 1, 2006.² Free State recently

¹ The expiration date for KTKA-DT's construction permit is not until December 15, 2006. The Commission's June 14, 2006 Public Notice in this docket indicates that the station is therefore not required to file for a waiver of the deadline ("A number of licensees have been granted CPs with deadlines that are later than July 1, 2006. As stated in the *Order*, such licensees must meet the replication/maximization interference protection deadline by the expiration date specified in their CP rather than the July 1, 2006 deadline..."). Given the importance to KTKA-DT of maintaining its interference protection, however, Free State files this Request out of an abundance of caution.

² See File No. BEDSTA- 20060428AJY. KTKA has filed for an extension of its STA.

obtained a modification to the station's construction permit to increase its maximum ERP from 25 kW to 55 kW.³ The station's tentative post-transition channel designation is channel 49.

Acquisition of KTKA and build out of the station's digital facilities

Free State acquired the license for KTKA-TV in a transaction that was consummated August 29, 2005. The previous licensee, Northeast Kansas Broadcast Service, Inc. ("Northeast") had been financially troubled. As a result, Northeast was operating KTKA-DT at low power under special temporary authority ("STA")⁴ and had acquired two extensions to its construction permit for KTKA-DT.⁵

Since acquiring KTKA, Free State has had less than a year to upgrade the station's minimized facilities to meet the July 1, 2006 replication deadline. During that time, Free State has discovered a number of undisclosed problems with KTKA's studio and transmitting equipment, apparently caused by Northeast's financial inability to properly maintain its facilities. For example, Free State discovered several months ago that the station's LPTV facility, K39BR, was not functioning properly and had been non-operational for more than 12 consecutive months prior to Free State's acquisition of KTKA.⁶ After a pair of damaging lightning strikes, Free State discovered that the tower at its studio site had not been properly grounded. The company then discovered that the HVAC system at its studio had been improperly constructed and maintained and was subject to frequent compressor failures. The company has had to divert significant financial and operational resources to remedy these problems.

Despite the financial and operational challenges that it faces to bring a neglected broadcast station up to par, Free State has invested heavily in the digital transition, and has made diligent efforts to meet the replication deadline. The company has already completed a new building for its upgraded digital transmitting equipment, has installed a new generator, exciter, and air conditioning equipment, and has completed all electrical work on the new facility. In May, the company filed an application to modify the station's construction permit to increase the station's maximum ERP from 25 kW to 55 kW so that it could deliver an interference-free, noise-limited service to 100% of its replication service population.⁷ On June 15, 2006, the FCC granted that application.⁸ Free State expects the full cost of the build out to exceed \$1,250,000.

³ See File No. BMPCDT-20060518ACS.

⁴ See File Nos. BEDSTA- 20030610AEE, BEDSTA-20031231ACF, BEDSTA-20040720AFA, and BEDSTA-20050208AJE.

⁵ See File Nos. BEPCDT20020227ADV and BEPCDT-20020830ABX at Exhibits 1 and 2, note 2 ("[KTKA] has also minimized its DTV installation because that is the only way it can potentially afford to place its digital television operation on-the-air.").

⁶ Free State notified the Commission of this issue by letter dated January 7, 2006.

⁷ Because KTKA-DT's tentative DTV channel designation (49) is not the channel on which it currently broadcasts (48), it is required to serve only 80% of the number of viewers served by the 1997 facility on which its replication coverage was based in order to maintain interference protection. See *In the Matter of*

Unfortunately, a vendor delay has slowed the project. The RF plumbing equipment for the DTV facilities was delivered over three weeks late.

Reason for waiver request

Due to circumstance beyond its control, Free State will be unable to meet the July 1, 2006 replication deadline. Despite having to play a constant game of catch up with the problems it inherited at the station, Free State has worked diligently to meet the July 1, 2006 replication deadline. Free State expected to meet the deadline until a recent vendor delay - the RF plumbing equipment for the DTV facilities was delivered over three weeks late. This delay means that Free State will not be able to meet the replication deadline.

Factors supporting the grant of the requested waiver

The Commission has consistently stated that, upon a showing of good cause, it will grant six-month waivers of the replication deadline to stations that are unable to meet the deadline due to circumstance beyond their control.⁹

Good cause exists in this case. Free State recently acquired KTKA, and has had less than a year to upgrade the station to meet the July 1, 2006 replication deadline. Remedying the immediate needs of this neglected station has diverted significant operational and financial resources and delayed Free State's DTV construction project. Still, Free State expected to meet the July 1, 2006 deadline until vendor delays made that impossible.

Free State has diligently pursued its upgrade and build out of the station's digital facilities and is committed to making KTKA-TV a state-of-the-art digital broadcast station. Free State's efforts have included obtaining the authority to build out KTKA's digital facilities to serve an even greater service area than is required to maintain the station's interference protection.¹⁰ Loss of interference protection would mean that much of Free State's investment to provide digital services to rural Topeka viewers had been wasted.

Moreover, the public interest supports the grant of this waiver request. The Commission recognized the public interest in Free State operating KTKA when it granted the company authority to take over the operations of this financially troubled station. Further, granting this waiver request will allow Free State the time to upgrade its facilities to a full 55 kW ERP, which

Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Report and Order, 19 FCC Rcd. 18,279 (2004) ("Order") at ¶ 78.

⁸ See Note 3, *supra*.

⁹ See Order at ¶ 87; *DTV Channel Election Issues – Compliance with the July 1, 2006 Replication/Maximization Interference Protection Deadline; Stations Seeking Extension of the Deadline*, Public Notice, MB Docket No. 03-15 (rel. June 14, 2006) at 3.

¹⁰ See Note 7, *supra*.

will allow the station to reach 100% of its replication service population with its advanced digital services.

Conclusion

For the good cause shown above, Free State requests a waiver of the replication deadline until December 15, 2006, the expiration date of its construction permit. Grant of this waiver will allow Free State to provide a greater number of rural Topeka DMA viewers with advanced digital broadcast services.

Regards,



Nicole E. Paolini-Subramanya

cc: James Evers
Patrick Knorr

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CERTIFICATION

I, Patrick Knorr, Manager of Free State Communications, L.L.C., have read the *Request for waiver of July 1, 2006 replication interference protection deadline* to which this Certification is attached and certify:

1. The facts contained therein are true and correct to the best of my knowledge, information and belief.
2. Neither Free State Communications, L.L.C. nor any party to Free State Communications, L.L.C.'s *Request for waiver of July 1, 2006 replication interference protection deadline*, is subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 USC § 862.



Patrick Knorr
Manager
Free State Communications, L.L.C.

Date: 6-26-06